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ATTORNEY FOR PLAINTIFF
UNITED STATES OF AMERICA

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION**

UNITED STATES OF AMERICA, Plaintiff, vs. JUSTIN ARTHUR BERGER, Defendant.	CR 23-15-H-BMM BRIEF IN SUPPORT OF MOTION FOR PRELIMINARY ORDER OF FORFEITURE
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The United States of America has filed an unopposed motion for a preliminary order of forfeiture. In support of that motion, the United States sets forth the following facts:

1. On October 18, 2023, the Defendant, Justin Arthur Berger, pleaded

guilty to Count 1 of the Indictment, which charges possession of an unregistered machine gun, in violation of 26 U.S.C. § 5861(d). Berger also admitted the forfeiture allegation in the Indictment, which contemplates the forfeiture of his right, title, and interest in certain firearms and ammunition. 26 U.S.C. § 5872(a).

2. A Preliminary Order of Forfeiture is necessary in order for the Bureau of Alcohol, Tobacco, Firearms and Explosives, Drug Enforcement Administration, or the United States Marshals Service to seize the following property, which is subject to forfeiture:

- Sig Sauer, Model P320, 9mm caliber pistol with serial number 58C052838;
- 34 rounds of assorted 9 mm caliber ammunition;
- Black and red Kydex IWB holster;
- Smith & Wesson, Model M&P 9 Shield, 9mm caliber pistol, with serial number: HVS9619;
- 8 rounds of assorted 9mm ammunition;
- Ruger, Model AR-556, .556 caliber rifle, with serial number: 851-43028;
- Aero Precision, Model X15, .556 caliber rifle, with serial number X157251; and
- Pistol, with unknown manufacturer, without a serial number.

3. The evidence set forth in the Offer of Proof filed by the government, in conjunction with Berger's Plea Agreement and entry of guilty plea, provides an

ample basis for an order of forfeiture in accordance with 26 U.S.C. § 5872(a).

See (Doc. 17).

4. Pursuant to Rule 32.2 of the Federal Rules of Criminal Procedure, the Court may enter a Preliminary Order of Forfeiture after the defendant's guilty plea to Count 1 of the Indictment and having pled true to the forfeiture allegation the property is then subject to criminal forfeiture. Rule 32.2 does not require the Court to await sentencing in order to commence the ancillary proceeding by entering its Preliminary Order of Forfeiture.

5. Upon issuance of a Preliminary Order of Forfeiture, the United States will provide written notice to all third parties asserting a legal interest in any of the above-described property and will post on an official government internet site (www.forfeiture.gov) for at least 30 consecutive days as required by Rule G(4)(a)(iv)(C) of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions, of the Court's Preliminary Order and the United States' intent to dispose of the property in such manner as the Attorney General may direct.

Accordingly, the United States respectfully requests that this Court enter a preliminary order of forfeiture forfeiting to the United States Berger's interest in the property described above and ordering the United States Marshals Service, Drug Enforcement Administration, and the Bureau of Alcohol, Tobacco, Firearms

and Explosives to seize the forfeited property pending the adjudication of any third party claims and then to dispose of it in accordance with the law.

DATED this 6th day of December 2023.

JESSE A. LASLOVICH
United States Attorney

/s/ Jeffrey K. Starnes
Assistant U.S. Attorney
Attorney for Plaintiff

CERTIFICATE OF COMPLIANCE

Pursuant to L.R. CR 12, I hereby certify that the foregoing document is proportionately spaced, has a typeface of 14 points or more, and the body of the brief contains 501 words.

DATED this 6th day of December 2023.

/s/ Jeffrey K. Starnes
Assistant U.S. Attorney
Attorney for Plaintiff